

sub 38  
38. (amended)      The [A] method of claim 51 wherein the body conduit comprises  
[treating] an esophagus [to reduce achalasia or esophageal spasm, the method comprising:  
irradiating the walls of an esophagus in a wavelength and intensity which causes a change  
in smooth muscle cells and prevents the smooth muscle cells from replicating;] and wherein said  
preventing step comprises preventing spasms of the smooth muscle to reduce achalasia or  
esophageal spasm. [tissue by elimination or reduction of the smooth muscle tissue.]

sub 43  
43. (amended)      The [A] method of claim 51 wherein the body conduit comprises  
[treating] an ureter or an urethra [to control spasms, the method comprising:  
irradiating the walls of an ureter or an urethra in a wavelength and intensity which causes  
a change in smooth muscle cells and prevents the smooth muscle cells from replicating;] and  
wherein said preventing step comprises preventing spasms of smooth muscle tissue to control  
spasms of the ureter or urethra. [by elimination or reduction of the smooth muscle tissue.]

### REMARKS

Applicant hereby provisionally elects Group II (claims 28-32, and 50) with traverse.  
Applicant's amendment adds claims 50 and 51. Applicant has also amended claims 28 and 33 to  
depend from claim 50 and claims 38 and 43 to depend from claim 51. As amended, claim 50 is  
generic to both Groups II and III and claim 51 is generic to both Groups IV and V.

Applicant traverses the restriction requirement based on the following reasons.

First, as regards this variation of the invention, applicant notes that claim 1 recites, in  
part, an apparatus for the treatment of body conduits, comprising an elongated body configured  
to be inserted into a body conduit, and a source of energy for emitting energy from the elongated  
body in an intensity which, when applied to walls of the body conduit causes a change in smooth  
muscle tissue which prevents the smooth muscle tissue from replicating. The Office Action  
makes no showing nor a substantive argument based in technology that applicant's device is  
capable of being used to ablate cataracts. For example, a device used to ablate cataracts requires  
a specific wavelength for transmission of the energy through the outer corneal eye tissue to treat

the inner eye tissue while minimizing trauma so that a patient does not lose vision. The Office Action does not provide any technological argument that a device having a source of energy for emitting energy to cause a change in smooth muscle tissue when applied to walls of the body conduit is one that is operates at a wavelength required to ablate the delicate tissue found in the eye while minimizing post-procedure trauma. Accordingly, the Office Action fails to establish that the apparatus as claimed can be used to practice another and materially different process.

Second, applicant notes that search and examination of an application is proper even if the application is alleged to have distinct inventions provided the search and examination can be made without serious burden (MPEP §803). Accordingly, in light of the claims as they now stand, applicant believes that a search to the entire application can be made without serious burden.

Applicant expressly reserves his right under 35 U.S.C. §121 to file a divisional application directed to the nonelected subject matter during the pendency of this application, or in an application claiming priority from this application.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 435712000900. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

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By: Sanjay S. Bagade  
Sanjay S. Bagade  
Registration No. 42,280

Morrison & Foerster LLP  
755 Page Mill Road  
Palo Alto, California 94304-1018  
Telephone: (650) 813-5720  
Facsimile: (650) 494-0792